IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DIONISIO TRIGO-GONZÁLEZ AND ANA RITA SUÁREZ-SEÍN, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED, AND DERIVATIVELY ON BEHALF OF FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND II, INC.; FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND III, INC.; FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND IV, INC.; FIRST PUERTO RICO TARGET MATURITY FUND VI, INC.; AND FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND VII, INC. **Plaintiffs** **v.** **BANCO SANTANDER, S.A.; SANTANDER BANCORP; BANCO SANTANDER PUERTO RICO; SANTANDER SECURITIES LLC; SANTANDER ASSET MANAGEMENT, LLC; JUAN CARLOS BATLLE; FRANCISCO JAVIER HIDALGO; LUIS ROIG; ROMÁN BLANCO; FREDY F. MOLFINO; FERNANDO L. BATLLE; MARIO F. GAZTAMBIDE; FRANCISCO MARRERO-MELÉNDEZ; JOSÉ E. VÁSQUEZ-BARQUET; AND ANTONIO ARIAS III** **Defendants** **v.** **FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND II, INC.; FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND III, INC.; FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND IV, INC.; FIRST PUERTO RICO TARGET MATURITY FUND V, INC.; AND FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND VII, INC.** **Nominal Defendants**	**Civil Action No.:** **3:16-CV-2868 (CCC)**

PLAINTIFFS' MOTION TO REMAND AND
MEMORANDUM OF LAW IN SUPPORT THEREOF

TO THE HONORABLE COURT:

COMES NOW Plaintiffs **DIONISIO TRIGO-GONZÁLEZ AND ANA RITA SUÁREZ-SEÍN, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED, AND DERIVATIVELY ON BEHALF OF FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND II, INC.; FIRST**

PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND III, INC.; FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND IV, INC.; FIRST PUERTO RICO TARGET MATURITY FUND VI, INC.; AND FIRST PUERTO RICO TAX-EXEMPT TARGET MATURITY FUND VII, INC., (collectively "Plaintiffs"), by and through their attorneys, respectfully state and request as follows:

MOTION

Plaintiffs, upon the accompanying Memorandum of Law, respectfully move this Court for an order remanding the action to the Commonwealth of Puerto Rico Court of First Instance, San Juan Part, pursuant to U.S.C. §1447. Contrary to the assertions set forth in Defendants' notice of removal, this Court does not have original jurisdiction over this action under the Class Action Fairness Act of 2005 ("CAFA") 28 U.S>C. §1332(d)(2)(A), 1332(d)(5)(B), and 1332 (d)(2). Rather, this Court lacks jurisdiction over the action based on the "local controversy" exception under CAFA, 28 U.S.C. 1332(d)(4)(A).

MEMORANDUM OF LAW

INTRODUCTION

On September 12, 2016, Plaintiffs filed a lawsuit against defendants Banco Santander, N.A., Santander BanCorp, Banco Santander Puerto Rico, Santander Securities LLC ("Santander Securities"), and Santander Asset Management, LLC ("SAM") (together "Santander" or the "Santander Defendants"), Carlos M. García, Jesús F. Méndez, Juan Carlos Batlle, Francisco Javier Hidalgo, Luis Roig, Román Blanco, Fredy F. Molfino, Fernando L. Batlle, Mario F. Gaztambide, Francisco Marrero-Meléndez, José E. Vázquez-Barquet, and Antonio Arias III (collectively, the "Director Defendants" and, together with the Santander Defendants, the "Defendants"), asserting derivative and class claims, alleging that that the Defendants breached their fiduciary duties and contractual duties to a number of closed-end Santander Funds[1] and the Funds' investors. Plaintiffs allege violations of Puerto Rico state law claims.

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[1] "Funds" means First Puerto Rico Tax-Exempt Target Maturity Fund II, Inc., First Puerto Rico Tax-Exempt Target Maturity Fund III, Inc., and First Puerto Rico Tax-Exempt Target Maturity Fund V, Inc.

Defendants filed a Notice of Removal on October 25, 2016, arguing that this Court has original jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"). The Notice of Removal, however, omitted the fact that the action concerns only issues and parties uniquely local to Puerto Rico, which strips this Court of jurisdiction under CAFA's "local controversy" exception, 28 U.S.C. § 1332(d)(4)(A). This action is a local controversy, as defined by CAFA, and should be remanded.

Defendants removed this action despite the fact that they were well aware that the class consisted of only Puerto Rico residents (only Puerto Rico residents were eligible to invest in the Santander Funds), and that several of the Defendants are Puerto Rico-based entities whose wrongdoings caused substantial harm to the Funds and the Funds' investors. For these reasons, Plaintiffs respectfully request that the Court consider awarding Plaintiffs their attorneys' fees and costs pursuant to 28 U.S.C. § 1447(c) for Defendants' improper attempt to remove this action to this Court.

ARGUMENT

I. LEGAL STANDARD

A civil action initially filed in state court may only be removed to federal court if the action is one "of which the district court of the United States have original jurisdiction." 28 U.S.C. § 1441(a). The party invoking federal jurisdiction – including a party seeking removal – has the burden of establishing that the court has subject matter jurisdiction over the case. *Amoche v. Guarantee Trust Life Ins. Co.*, 556 F.3d 41, 48 (1st Cir. 2009) (the "burden of showing federal jurisdiction is on the defendant removing under CAFA").

Cases removed to federal court are subject to remand under 28 U.S.C. §1447(c). Plaintiffs seeking a remand under the local controversy CAFA exception bear the burden of proving, by preponderance of the evidence, their applicability. *See In re Hannaford Bros. Co. Customer Data Security Breach Litig.*, 564 F.3d 75, 78 (1st Cir. 2009).

II. THIS ACTION SHOULD BE REMANDED BECAUSE THIS COURT LACKS JURISDICTION

Defendants seek removal to this Court pursuant to CAFA, which was enacted to extend the subject matter jurisdiction of the federal courts to encompass putative class actions in which: (1) the damages claimed by the plaintiffs exceed $5,000,000, exclusive of interests and costs, (2) the class is comprised of more than 100 members, and (3) at least one member of the class is a citizen of a state different from that of any defendant. 28 U.S.C. § 1332(d)(2) and (d)(5)(b). Plaintiffs do not dispute that the damages claimed by the Plaintiffs exceeds $5,000,000, the class is comprised of more than 100 members or that one member of the class is a citizen of a state different from any defendant. However, even if true, these facts to not confer this Court with jurisdiction because this action fits within an exception to CAFA's grant of jurisdiction.

CAFA generally expanded diversity jurisdiction to allow for federal court jurisdiction over class actions satisfying the statute's amount in controversy and minimal diversity requirements. *In re Hannaford Bros. Co. Customer Data Security Breach Litig.*, 564 F.3d 75 at 77 (citing 28 U.S.C. § 1332(d)(2)). Yet, that grant of jurisdiction is subject to several exceptions, one of which is the "local controversy" exception (28 U.S.C. § 1332(d)(4)(A)). *See Coll. of Dental Surgeons of Puerto Rico v. Triple S Mgmt., Inc.*, No. CIV. 09-1209 JAF, 2011 WL 414991, at *1 (D.P.R. Feb. 8, 2011). The "local controversy" exception applies where (1) two-thirds of the proposed plaintiff class are citizens of the state where the action was originally filed; (2) at least one defendant is a citizen of the state where the action was originally filed, whose alleged conduct created a significant basis for the plaintiffs' claims, and from whom significant relief is sought; (3) the "principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed"; and (4) a class action asserting similar factual allegations against any of the defendants has not been filed in the preceding three years. 28 U.S.C. § 1332(d)(4)(A). The allegations in the Complaint demonstrate that the local controversy exception to federal jurisdiction applies here.

A. More Than Two-Thirds of the Proposed Class are Puerto Rico Citizens

The Complaint alleges that only Puerto Rico residents were eligible to invest in the Defendants' Puerto Rico Funds, and the Funds were only marketed and sold to Puerto Rico residents. ¶¶8, 14, 22, 23.[2] Specifically, the Funds are part of the "First Puerto Rico Family of Funds", which are offered only to individuals having their principal residence within Puerto Rico and to persons, other than individuals, whose principal office and principal place of business are located within Puerto Rico. ¶43. The Funds are all corporations organized and existing under the laws of Puerto Rico, and they are closed-end management investment companies registered under the Puerto Rico Investment Companies Act of 1954. ¶24. By definition, the class is limited to residents of Puerto Rico, a fact which cannot be disputed.[3] Thus, the first prong of the local controversy exception is easily satisfied. *See In re Hannaford Bros. Co. Customer Data Security Breach Litig.*, 564 F.3d at 81 (noting that "defining the class to include only citizens of a particular state can defeat federal jurisdiction under CAFA").

B. At Least One Defendant is a Citizen of the Puerto Rico Whose Conduct Formed a Significant Basis for Plaintiffs' Claims, and Plaintiffs Seek Significant Relief From Those Defendants

Plaintiffs assert claims against four Santander entities that are incorporated under the laws of the Commonwealth of Puerto Rico and have principal offices in Puerto Rico: Santander BanCorp ("BanCorp"), Santander Securities LLC ("Santander Securities"), Banco Santander Puerto Rico and Santander Asset Management ("SAM"). In fact, Banco Santander, S.A. ("BSSA") is the only Santander Defendant that is not based and incorporated in Puerto Rico. Defendants omit these facts from their Notice of Removal.

BanCorp is incorporated under the laws of the Commonwealth of Puerto Rico and has its principal offices in Guaynabo, Puerto Rico. ¶27. BanCorp is a financial holding company offering a full range of financial services through its wholly-owned and main subsidiary, Banco Santander

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[2] Citations to "¶ _" refer to Plaintiffs' Shareholder Derivative Action and Class Action Complaint for Breaches of Fiduciary Duty and Breaches of the Duty of Good Faith ("Complaint").

[3] For these reasons, the court does not require evidence of citizenship. *See Manson v. GMAC Mortg. LLC*, 602 F. Supp. 2d 289, 295 (D. Mass. 2009).

Puerto Rico. *Id*. As a result of the misconduct alleged in the action, BanCorp, together with Banco Santander Puerto Rico (discussed below), have been amassing millions of dollars per year in investment advisory fees and management fees from the Funds. ¶5.

Santander Securities is a securities broker-dealer organized as a limited liability company under the laws of the Commonwealth of Puerto Rico with its principal offices in San Juan, Puerto Rico. ¶28. Santander is one of the largest securities broker-dealers in Puerto Rico, and currently has approximately 40 registered representatives and 10 branch offices located in Puerto Rico. *Id*. Santander Securities served as the underwriter for the public offerings of shares of common stock for the Funds and as broker-dealer for both shares in the Funds and for the underlying securities in which the Funds invested. *Id*. Santander Securities also employed financial advisors who solicited and advised Plaintiffs and the Class to invest in the Funds. *Id*. As a result of the misconduct alleged in the action, Santander Securities generated and received substantial compensation and fees from the Funds, at the expense of the Funds and Funds investors. ¶¶5, 28.

Banco Santander Puerto Rico is a Puerto Rico chartered commercial bank. ¶27. Santander Puerto Rico has its principal offices in Hato Rey, Puerto Rico. *Id*. Banco Santander Puerto Rico is one of Puerto Rico's largest financial institutions, and it acted as the issuing, paying and transfer agent, and as the administrator and custodian of the Funds. ¶¶5, 27. Banco Santander Puerto Rico derived substantial income from administering and maintaining shareholder accounts for the Funds, all at the expense of the Funds and the Funds' investors. ¶¶5, 9, 27, 83

SAM provided the Funds with investment advisory, management and administrator services. ¶¶4, 30, 83. SAM is an investment advisory firm organized as a limited liability company under the laws of the Commonwealth of Puerto Rico with its principal offices in Guaynabo, Puerto Rico. ¶30. SAM derived substantial income from managing, administrating, and acting as investment advisor to the Funds, to the detriment of the Funds and the Funds' investors. ¶¶30, 83, 84.

There can be no question that these four Santander Puerto Rico entities' misconduct formed the grounds for Plaintiffs' claims and resulted in significant losses to the Funds and the Funds' investors. For these reasons, the second prong of the local controversy exception, 28 U.S.C. § 1332(d)(4)(A), is satisfied.

C. Plaintiffs' and the Class' Principal Injuries Were Incurred in Puerto Rico

Plaintiffs allege that the Santander Defendants owed Puerto Rico-based investors the highest standard of fiduciary duty or contractual duty. ¶1. The Santander Defendants – including the Puerto Rico-based entities described above – benefitted from the scheme they created that allowed them to wrongfully garner millions of dollars in fees and commissions for themselves from the Funds, which all Plaintiffs' and Class members' investments in the Funds suffered crippling losses. ¶¶2, 116, 150, 165, 185. The conflicted transactions the Defendants engaged in for the purpose of generating fees and commissions harmed the Funds and the Funds' investors, and but were prohibited by Puerto Rico law. ¶¶14, 72, 176, 183. These principal injuries were caused by the Defendants' wrongdoing, and because the Funds were offered only to Puerto Rico residents, there can be no doubt that the injuries were incurred in Puerto Rico. Thus, the third prong of the local controversy exception is satisfied.

D. No Other Class Action Asserting Similar Allegations Has Been Filed Against Defendants

To the best of Plaintiffs' knowledge, no other class action asserting similar allegations against the Defendants has been filed within the past three years. Thus, the final prong of the local controversy exception is satisfied.

For these reasons, CAFA's local controversy exception to federal court jurisdiction applies here, and this action should be remanded.

CONCLUSION

CAFA imposes definite limits on the scope of federal court jurisdiction to keep localized controversies out of federal courts. Here, a class exclusively composed of Puerto Rico residents seeks significant relief against several Puerto-Rico entities and persons for violations of Puerto Rico law. Under CAFA, such an action is to be remanded unless the same or similar factual allegations have recently been the subject of other class actions against the same defendants. That is not the case here.

WHEREFORE, Plaintiffs respectfully request that the Court grant their motion and enter an order remanding this action to the state court. Plaintiffs further request that the Court award Plaintiffs their attorneys' fees and costs relating to this motion, pursuant to 28 U.S.C. § 1447(c).

RESPECTFULLY SUBMITTED.

CERTIFICATE OF SERVICE, we hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system with will send notification of such filing to all attorneys of record registered in the use of the CM/ECF system in this case.

In San Juan, Puerto Rico, this 15th day of November 2016.

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